

7 Official Opinions of the Compliance Board 272 (2011)

**Meeting – Determined not to be a meeting – Act did not apply
when a quorum of the members of the public body was not
convened**

September 13, 2011

*Matthew Bienak
Cumberland Times-News
Complainant*

*Board of County Commissioners
for Allegany County
Respondent*

We have considered the complaint of Matthew Bienak (“Complainant”) that the Board of County Commissioners of Allegany County (“Commissioners”) violated the Open Meetings Act (“the Act”) by discussing public business in a meeting neither announced nor open to the public. We conclude that the discussion alleged by Complainant did not occur in a meeting subject to the Act.

The Commissioners held a public meeting on June 9, 2011. The minutes of that meeting state that, after a letter on the transfer of certain schoolchildren to Washington County was read into the record, “President McKay said this leads into some discussion with Delegate Myers and then asked Commissioner Valentine to give a recap.” The minutes then state that Commissioner Valentine reported, in part, as follows:

The County Commissioners, in discussion with Delegate Myers, have decided that the County will pay the tuition for the middle school students to continue at Hancock for one year while Delegate Myers has an opportunity to draft legislation that may help all counties in the State that are facing a problem with students living close to the school but in a bordering county.

The minutes reflect a subsequent discussion of the issue with Delegate Myers.

Complainant infers from the language quoted above that the Commissioners had reached their decision through communications conducted

in an earlier meeting and that the public had not been given notice of such a meeting. In their response, the Commissioners stated that they did not discuss the issue in any “meeting, as that term is defined under the Act.” The County Attorney has additionally specified that the Commissioners “did not hold any meetings at which the issue of the Little Orleans schoolchildren being transferred to Washington County was discussed, except for their public meeting of June 9, 2011.” Complainant has not alleged violations with respect to the June 9 meeting.

The Act applies only when a public body “meets,” defined in State Government Article (“SG”)§ 10-502(g) as “to convene a quorum ... for the transaction of public business.” The Act does not apply to decisions made outside of a meeting, as might occur when the members of a public body communicate with one another separately. For instance, an e-mail canvass of a public body’s members conducted at a time when a quorum is not present is not a “meeting” and is not subject to the Act. *See 2 OMCB Opinions* 78, 79, citing 81 *Opinions of the Attorney General* 141,143 (1996); *see also 7 OMCB Opinions* 193, 194 (2011) (addressing a decision reached by various modes of communication). While other statutes or a public body’s own by-laws might require it to reach its decisions in the presence of a quorum, the Act does not so require and does not apply as long as the members are incapable of acting at one time as the public body. *See 2 OMCB Opinions* 49, 50 (1999). Our authority extends only to violations of the Act. SG § 10-502.5(a).

We conclude that we have no authority to address the mode by which the Commissioners conducted the earlier “discussion” described in the minutes of the June 9, 2011 meeting, because it did not occur in a meeting subject to the Act. We simply note that, as a general matter, the discussion of public business out of the public eye can lead to the perception that the “real decision-making process” has occurred in secret and that the subsequent open meeting “is a mere formality.” *See 7 OMCB Opinions* at 194.

OPEN MEETINGS COMPLIANCE BOARD

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